

**DISTRIBUTION
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EXHIBIT 7002**

Electronically Filed
Docket: 2012-6 CRB CD 2004-2009
Filing Date: 04/05/2018 06:53:10 PM EDT

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of

Phase II Distribution of the 1999, 2000, 2001,
2002, 2003, 2004, 2005, 2006, 2007, 2008
and 2009 Satellite Royalty Funds

Docket Nos. 2012-7 CRB SD 2000-2009;
2008-5 CRB SD 1999-2000 (Phase II)

In the Matter of

Phase II Distribution of the 2004, 2005, 2006,
2007, 2008 and 2009 Cable Royalty Funds

Docket Nos. 2012-6 CRB CD 2004-2009
(Phase II)

Testimony of Toby Berlin

Testimony of Toby Berlin

My name is Toby Berlin and I am testifying on behalf of the Settling Devotional Claimants ("SDC") in these proceedings.¹ I have been requested to provide testimony on the procedures employed by satellite and cable television companies to make programming decisions in the 1999-2009 time frame.

I. Professional Background: Work and Education History

I am the President and Founder of School of Toby, Inc., a media consulting business, which was founded in 2013. I provide consulting expertise in the cable, satellite, multichannel video programming distributor ("MVPD"), over-the-top ("OTT") industries.² My services include high level negotiations, strategic planning, business development, financial and contractual support. I advise media companies on organizational structure, packaging, pricing, cost reduction, revenue growth, subscriber acquisition and retention, contract database, compliance, contract negotiations and strategies and crisis management. My clients include

¹ The Settling Devotional Claimants are comprised of the following entities: Amazing Facts, Inc., American Religious Town Hall, Inc., Catholic Communications Corporation, Christian Television Network, Inc., The Christian Broadcasting Network, Inc., Coral Ridge Ministries Media, Inc., Cottonwood Christian Center, Crenshaw Christian Center, Crystal Cathedral Ministries, Inc., Evangelical Lutheran Church In America, Faith For Today, Inc., Family Worship Center Church, Inc. (D/B/A Jimmy Swaggart Ministries), International Fellowship of Christians & Jews, Inc., In Touch Ministries, Inc., It Is Written, John Hagee Ministries, Inc. (aka Global Evangelism Television), Joyce Meyer Ministries, Inc. (FIK/A Life In The Word, Inc.), Kerry Shook Ministries (aka Fellowship of the Woodlands), Lakewood Church (aka Joel Osteen Ministries), Liberty Broadcasting Network, Inc., Messianic Vision, Inc., New Psalmist Baptist Church, Oral Roberts Evangelistic Association, Inc., RBC Ministries, Reginald B. Cherry Ministries, Rhema Bible Church (aka Kenneth Hagin Ministries), Ron Phillips Ministries, Speak The Word Church International, St. Ann's Media, The Potter's House Of Dallas, Inc. (d/b/a T.D. Jakes Ministries), Word of God Fellowship, Inc., d/b/a Daystar Television Network, Billy Graham Evangelistic Association, and Zola Levitt Ministries.

² MVPD generally refers to cable and satellite television companies. OTT refers to television viewers who bypass traditional over-the air, cable, and satellite-delivered programming by using the Internet.

multiple research firms that educate large institutional investors about the media industry. In addition, I am a consultant to the Sony team that's creating a digital MVPD for the PlayStation.

Prior to starting School of Toby, I was a Vice President of Programming Acquisitions at DIRECTV. I was a member of the executive team that grew the business from 3.5 million subscribers to over 20 million subscribers between 1998 and 2013. I managed sourcing and negotiations for programming acquisitions for the DIRECTV service across numerous categories including all New Networks, Spanish-language and International Programming, Shopping Channels, Adult Programming, Airborne,³ and Music packages. I formerly oversaw Pay-per-View Sports, Events and Retransmission Consents/Must Carry. I graduated from the University of Miami in Coral Gables and hold a law degree from Southwestern University of Law in Los Angeles. My Bio is attached as Exhibit 1.

II. Satellite Television Marketing Strategy

When I started, DIRECTV did not have the ability to carry local broadcast stations. In 1999, the Satellite Home Viewer Improvement Act was passed by Congress and DIRECTV was afforded a statutory right to launch local stations across the U.S. That right has been subsequently extended by Congress through the Satellite Home Viewer Extension and Reauthorization Act in 2004 and by the Satellite Television Extension and Localism Act in 2010. I was the executive in charge of launching all the local stations and had oversight responsibility for those deals through 2007. In total, I launched 143 DMAs (Nielsen's Designated Market Areas) consisting of approximately 2,100 local stations.

When satellite operators like DIRECTV and DISH started operations, they competed against entrenched cable company competitors; therefore, to gain subscribers, it was particularly important for the satellite companies to develop program offerings that would be most attractive to gaining potential subscribers and retaining those who became subscribers. Quite simply, more popular programs, as measured by viewing patterns, were more valuable and those with smaller audiences were less valuable. In this regard, DIRECTV carefully analyzed the ratings of cable program because we wanted to be sure that we offered programs that were competitive with the most popular offerings on cable systems, as measured by Nielsen audience ratings.

³ The Airborne service allowed viewers to watch DIRECTV programming on the following airlines: Continental/United, Jet Blue and Frontier.

In order to compete effectively against cable, one of the successful marketing tactics we deployed was to target “niche” demographics. Among the “niches” were sports, women, religion, foreign language and children. We knew our superior sports products attracted men, and we had a great line-up of networks to attract women (e.g, Food, HGTV, Lifetime, WE, audio music). Each of these networks carried specific programs that achieved strong ratings. We realized early on that religion was a very strong niche and decided to aggregate religious programming to satisfy that niche based upon programs that would likely be the most popular in the context of the socioeconomic characteristics of a particular DMA.

I would add that this approach was no different from the tactic developed by cable operators over the same time period. Both industries, satellite and cable, recognize the importance of niche audiences for content, and plan to deliver such programming packages so that they can attract and retain paying subscribers.

III. Serving DMAs and Channel Selection

I will now describe DIRECTV’s process for commencing service in new DMAs, how stations were selected for carriage and the decision process to determine if we would carry the stations’ signal out of market. Because we had to follow a “carry one, carry all” local stations rule, and because there were business limitations preventing us from launching all DMAs, we had to choose channels carefully to ensure that they carried programming that would be popular and attract subscribers.

A. Local-Into-Local Service

Upon receiving the right to launch local stations, DIRECTV appointed a “local-into-local” marketing team. Among its duties was to choose the DMAs and the order in which they would be launched. For each DMA, the team’s research took into account the number of DIRECTV subscribers, the competition (cable only at that time) and its penetration, the topography (because satellite did better in flat, rural areas), the number of multi-dwelling units and cable’s penetration in those units. At the time, we sold mostly at retail outlets, so we also looked for DMAs with a strong DIRECTV retail presence. Finally, at that time, we did not own many of the companies that did our installation, so we tended to focus on DMAs where we owned the installation companies and customer service call centers.

From a satellite transmission perspective, instead of using a national signal to distribute local stations throughout the entire U.S. (which would have been a waste of bandwidth,) DIRECTV developed a spot beam technology that enabled it to have smaller satellite beams throughout the U.S. This technology allowed DIRECTV to tailor channel and program offerings from DMA to DMA. This became an important reason why DIRECTV carried quite a few stations out of market.

I must emphasize how important it was to obtain the right to carry local channels. The feeling among DIRECTV management was that we would be unable to meaningfully compete against cable if we could not carry local content. At the time, DIRECTV subscribers wanting to see local channels were either using a lifeline cable service⁴ or an over the air antenna. Neither of these options was a good or easy solution for the subscriber, and both placed DIRECTV at a severe marketing disadvantage.

B. Factors Driving Subscribers to DIRECTV

There were several significant factors reasons that drove customers to become DIRECTV subscribers. The first was NFL Sunday Ticket. The second was to ability of West Coast subscribers' to receive East Coast signals. Access to East Coast signals was the first time a West Coast subscriber had the ability to time shift a network. The third involved subscribers that were "unserved" by a local station. These subscribers could elect to receive a "distant network signal" of a broadcast network as an alternative. Access to network channels in unserved areas was a big plus for DIRECTV, as well as other satellite service providers.

When DIRECTV launched in 1994, it was expensive to become a DIRECTV subscriber. It could cost \$1,000 just to set up service. By comparison, cable set up fees were relatively cheap. However, once DIRECTV was authorized to distribute local channels, DIRECTV was able to drop costly installation fees, thereby making the company a formidable competitor to cable. While at the beginning of DIRECTV in 1994, our subscribers tended to be more affluent, once we were able to stop charging for installation and were able to offer local channels, our subscriber base became more diverse and, over time, more closely paralleled cable.

⁴ A "lifeline" cable service is the lowest tier in a cable system's pricing package, and typically consists only of local stations available over-the-air.

The process for launching local channels in a DMA was mandated by the FCC. It began with an affirmative notice to stations in each DMA, at which point a station could either elect “must carry” or “retransmission consent.” “Must carry” means exactly what it says – DIRECTV was obligated to carry that station as long as it delivered a quality signal to our head-end. “Retransmission consent” meant that DIRECTV had to enter into a negotiation to pay that station license fees in order to carry it.

Up until that time, except for people receiving signals via home antennas (i.e. over the air), only cable subscribers could receive local stations. And the cable system operators never paid for carriage. In fact, stations willingly offered their stations’ signals for free so they could have enough “eyeballs” to sell advertising. All of this changed when DIRECTV and Dish decided to launch local channels. Because we had to initiate service in so many markets in a short period of time, it was decided that we would pay a nominal fee to each station for the right to carry their signal. The way stations were paid was an amount per subscriber per month. So, if a station is being paid \$0.25, it means \$0.25 per subscriber per month.

C. Competing with Cable

Once we determined what stations we would carry in each market, we performed another study. Since we were utilizing spot beam technology, the marketing group would perform a study showing the station line-up in each DMA that was launched and covered by the same spot beam satellite against a cable line-up in the same DMA. For example, Los Angeles and San Diego were covered by the same satellite. If there was a station in Los Angeles that we wanted to carry in San Diego, either because cable was carrying it and we wanted to compete, or because cable was not carrying it and we thought it would bolster our line-up and attractiveness to subscribers, we would then carry it and pay out of market royalty fees (compulsory royalty fees). In other words, we wanted our line-up to at least match our cable competitors, or be better than our cable competitor.

D. Importance of Program Ratings

In deciding whether or not to carry that station on an out of market basis, we would look at ratings, just like our cable competitors. Our marketing and business analytics departments would supply a list of stations in a DMA with their Nielsen ratings. If a station had high ratings, and cable had it or we believed it would bolster our line-up because it had high ratings, we would

carry the station out of market and pay copyright royalties. Ratings were the single most significant factor that the business team considered when evaluating new programming acquisition opportunities. The Nielsen ratings and other audience measurement tools play a pivotal role in determining the true value of a signal and its constituent programs. This is consistent with the very simple paradigm that satellite operators value programs that people watch and do not value programs that people do not watch. Based on my years of experience in the subscription television industry, I would say other satellite service providers and cable operators all viewed ratings as principal measure of value within a defined genre of programming.

One reason ratings are crucial is because it is difficult to discontinue a channel after a commitment has been made to include it. Once a decision was made to carry a station out of market, DIRECTV rarely, if ever, pulled it from the DMA, unless that DMA became “served,” or if that network’s station launched in the DMA. The reason we never pulled a station once launched is that every station had some loyal constituency, usually a niche audience. However small it might be, we never wanted to have subscribers retaliate by “churning” off the platform, or discontinuing service. So, it was a common practice of DIRECTV that once a station’s carriage commenced, the signal rarely went dark, or was pulled off the air.⁵

As one of the top Programming Acquisitions executives at DIRECTV and the person in charge of launching the local programming, I was the executive responsible for the local carriage decisions. My goal was to have the most popular programming and to make our subscribers happy so they would stay for a long time. In addition, I wanted a strong line-up to market to potential new subscribers whether they were already cable subscribers or simply using an over-the-air antenna to get their favorite stations.

III. Religious Programming

DIRECTV always understood that religious viewers were an important niche that needed to be courted and secured. In the late 1990s, DIRECTV targeted the devotional programming

⁵ The practice was challenged in 2012, when DIRECTV was forced to pull down all of the Viacom networks in a bitter dispute over programming fees. Consistent with my earlier comments, a fee increase initially demanded by Viacom was not justified by the ratings for its channels and programs. DIRECTV was willing to “go dark” on Viacom programming until the fees were reduced.

audience with several specific pay-per-view program (“PPV”) offerings. At the time, DIRECTV shared a satellite orbital slot with a company called USSB. USSB had exclusive rights to HBO, Showtime and MTV. DIRECTV had everything else. This created a disparity in DIRECTV’s PPV revenues, because USSB was afforded the exclusive rights to all of the PPV boxing matches (solely distributed by HBO and Showtime). Because of this, DIRECTV experimented with alternative PPV products that it might not normally seem a typical PPV show. Prime example of the targeted, niche PPV offering were the Easter and Christmas pageants from the Crystal Cathedral. Crystal Cathedral, whose Hour of Power program has a loyal following, staged extravagant pageants during the most important religious seasons. The programs had respectable “buys,”⁶ which let us know that our subscribers enjoyed this type of programs. The Crystal Cathedral programs were an important bridge to a valuable niche audience that helped DIRECTV grow and sustain growth during a very formative period.

Launching local channels also allowed DIRECTV to distribute a large quantity of religious programming that it did not have access to prior to launching local channels. Carriage of broadcast channels, particularly those that telecast large amounts of religious programming, was met with enthusiasm from our subscriber base. Our positive experience with religious programs also encouraged DIRECTV to produce its own specialty devotional programs, such as church services from the University of Notre Dame⁷ as well as a televised series entitled “Songs of Praise”. The latter show featured well-known performers singing popular religious songs and featured choirs from around the country, including from the Crystal Cathedral, Brooklyn Tabernacle, St. Olaf, and Coral Ridge, among others. One of these specials even garnered over 2 million viewers and strengthened DIRECTV’s position as a proud supporter of family-friendly programming.

⁶ The “buy” rate for a pay-per-view program serves a similar function to Nielsen ratings because it quantifies the popularity of a program.

⁷ I also helped DIRECTV launch a special platform called “Public Interest Obligations” or PIO channels. The FCC mandated that DIRECTV take 4% of its capacity (about 10 channels) for non-commercial channels. Many religious channels applied for the PIO channel spots. I was able to negotiate carriage deals with some of them, thereby continuing to serve our important religious subscriber niche.

IV. Other Niche Areas

A. Spanish Language Subscribers

Another area over which I had oversight was DIRECTV's Spanish language platform, formerly known as Para Todos and now known as DIRECTV Mas. Our satellite competitor had launched a Spanish language platform, and we knew it was very popular. We thought we could improve upon the Spanish line-up and in 2000 we launched our version of a Spanish platform. Unfortunately, our competitor had the largest Mexican network on an exclusive basis, but I was able to "own" the Puerto Rican, Cuban and Dominican markets by virtue of exclusive deals with networks from those countries. According to research, we understood that the Hispanic market was an active consumer of religious programming, particularly religious programming from their home country. To that end, I handled distribution deals for the following Spanish language religious networks: EWTN Red Global Catolica, Enlace Christian TV and Almavision..

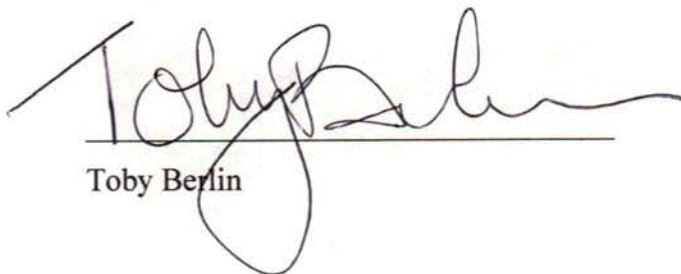
B. Children Programming

Another area that I had oversight was children's programming. As children's viewership habits largely depended on parental involvement, we knew that children's programming was a big driver for new subscribers, as well as a great marketing tool to introduce new programming packages. Some of the more popular children's programming was originated by PBS and Discovery. I also launched some of the "new" entrants to the children's programming market – PBS Kids, Baby First TV (English and Spanish), Vme (a Spanish language network geared towards children), Discovery Familia (Spanish network geared towards families). These eventually became widely distributed by other pay TV operators as well.

DECLARATION OF TOBY BERLIN

I declare under penalty of perjury that the foregoing testimony is true and correct and of my personal knowledge.

Dated: May 9, 2014



Toby Berlin

EXHIBIT 1

Toby Berlin Bio

In her current role, Toby Berlin provides consulting expertise in the Cable/Satellite/MVPD universe including, high level negotiations, strategic planning, business development, financial and contractual support. She also advises on organizational structure, packaging, pricing, cost reduction, revenue growth, subscriber acquisition and retention, contract database, compliance, contractual negotiations and strategies and crisis management. She serves as the Cable/Satellite/Retransmission Consent Advisor for multiple research firms to educate large institutional investors on industry. In addition, Berlin is a consultant to the SONY team that's developing a digital general network distribution product for the Playstation and advises on essential successful media distribution strategies and sales, marketing and operations best practices. She has created the roadmap for news-based cable network for expansion into airlines, hotels, motels and office buildings as well as crafted a successful negotiation strategy for cable networks seeking to extend contractual relationship with distributors.

In her previous role, Berlin was responsible for aspects of programming acquisitions for the DIRECTV service including all networks available on DIRECTV's Spanish-language package DIRECTV en Español, DIRECTV's WorldDirect international programming packages, shopping channels, adult programming, DIRECTV's airborne platforms on Continental, JetBlue and Frontier airlines, as well as the Sonic Tap music channels available on the DIRECTV platform.

As a contract specialist, Berlin contributed millions of dollars to the bottom line from programmers' contractual non-compliance.

After the passing of the Satellite Home Viewer Improvement Act of 1999 (SHVIA), which gave DIRECTV the rights to broadcast local channels across the United States, she led the efforts to bring these channels to homes across the country. Berlin negotiated the local into local rights for DIRECTV, and successfully launched the broadcast of local channels in over 143 DMAs since January 2000.

In 2006, she conceived, developed and directed the execution team for DIRECTV's Titanium package. This upscale service gives VIP subscribers access to every channel and every Pay Per View event and movie broadcast on the DIRECTV service for a single yearly fee, and debuted to a chorus of positive publicity singling out the platform's uniqueness and exclusivity.

Berlin was also the president emeritus and founder of the Women's Leadership Exchange at DIRECTV. This internal group enhanced the experiences of female employees at DIRECTV through monthly seminars with industry executives, networking sessions, Toastmasters club, a mentoring program, a working mothers group, and quarterly newsletters. The WLE currently operates in Los Angeles, Denver and New York.

Berlin is equally adept at handling Sponsorship deals. As founding organizing committee member for DIRECTV's annual Beach Bowl and VIP "After Party" aligned with Super Bowl she negotiated network and product sponsorships, celebrity, athlete and entertainer participation. 2013 performers included Mark Cuban and Justin Timberlake. The event had been held for six years and is televised throughout U.S. and is one of the most anticipated events of the Super Bowl weekend.

Prior to her work at DIRECTV, she served as executive director of The Learning Annex, where she was responsible for the creation of a monthly catalog of over 250 classes featuring top best-selling authors and personalities.

Berlin holds a bachelor's degree from the University of Miami in Coral Gables, Fla. and a law degree from Southwestern University of Law in Los Angeles. Berlin lives with her family in Santa Monica, Calif., where she is active in the community and in 2010, served as a board member for the Santa Monica Pier.

Certificate of Service

I hereby certify that on Thursday, April 05, 2018 I provided a true and correct copy of the 7002 - Berlin AWDT (Designated) to the following:

MPAA-Represented Program Suppliers, represented by Gregory O Olaniran served via Electronic Service at goo@msk.com

Independent Producers Group (IPG), represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

Signed: /s/ Michael A Warley